

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 10-AE-08314-RAP
)	
RANDELL ANTHONY MONACO,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 158559,)	ENROLLMENT [Bus. & Prof. Code,
)	§ 6203, subd. (d); Rules Proc. of State Bar,
<u>A Member of the State Bar.</u>)	rule 700, et seq.]

I. INTRODUCTION

This matter is before the court on a motion filed by the Presiding Arbitrator of the State Bar’s Mandatory Fee Arbitration Program, by and through his designee, Jill Sperber, Director of the Mandatory Fee Arbitration Program and Special Deputy Trial Counsel, seeking the involuntary inactive enrollment of Award Debtor **Randell Anthony Monaco** (“Award Debtor”), pursuant to Business and Professions Code section 6203, subdivision (d),¹ and rule 701 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”) due to his failure to pay an arbitration award. Based on the Presiding Arbitrator’s motion and supporting documents, the court finds that Award Debtor has failed to comply with the arbitration award and has not produced a payment plan acceptable to the client or the State Bar.

II. SIGNIFICANT PROCEDURAL HISTORY

On September 7, 2010, the Presiding Arbitrator, by and through his designee, Jill Sperber, filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. & Prof. Code, section 6203, subd. (d), Rules Procedure of State Bar, rule 700, et seq.) A copy of

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

the motion was properly served at Award Debtor's official State Bar membership records address ("official address") on September 3, 2010, by certified mail, return receipt requested, and by regular mail.² Award Debtor failed to respond to the Presiding Arbitrator's motion or request a hearing. (Rules of Procedure, rules 702 and 704.)

On September 8, 2010, the court filed a Notice of Assignment. A copy of said notice was properly served on Award Debtor by first-class mail, postage fully prepaid, on September 8, 2010, at his official address. The copy of said notice was not subsequently returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

This matter was submitted for decision on September 28, 2010. That same day, a copy of the Submission Order was properly served on Award Debtor at his official address. The copy of the Submission Order was not subsequently returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Award Debtor was admitted to the practice of law in California on June 9, 1992, and has been a member of the State Bar at all times since.

B. Facts

In 2008, Suzanne Silva ("Silva") requested mandatory fee arbitration with the Orange County Bar Association to resolve a fee dispute with Award Debtor. On April 2, 2009, the Orange County Bar Association served a non-binding arbitration award on the parties. It awarded Silva a refund in the amount of \$7,000 in attorneys' fees and costs plus \$350 of the arbitration filing fee. This award subsequently became final and binding because neither party filed a timely request for trial after arbitration.

On June 1, 2009, Silva, through an attorney, sent a letter to Award Debtor demanding payment of the award. Silva's attorney did not receive a reply from Award Debtor.

² The court takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h).

On June 22, 2009, Silva's attorney filed, on Silva's behalf, a request for enforcement of the arbitration award ("request for enforcement") with the State Bar Office of Mandatory Fee Arbitration ("State Bar") pursuant to section 6203, subdivision (d).

On or about July 15, 2009, the State Bar served the request for enforcement on Award Debtor by regular and certified mail at his official address. Included in this mailing was a cover letter from the State Bar advising Award Debtor of the potential consequences for: (1) failing to comply with the arbitration award and (2) failing to respond to the Client's Enforcement Request by August 14, 2009.

When the State Bar did not receive a reply from Award Debtor, it sent a warning letter to him on August 18, 2009, advising him of the ramifications of his continued non-compliance with a final and binding fee arbitration award. The letter advised that the State Bar would seek an order from the Presiding Arbitrator for administrative penalties to be imposed.

On September 8, 2009, Award Debtor called the State Bar's offices and spoke with a staff person regarding the State Bar's August 18, 2009 letter. In that conversation, Award Debtor stated that he had not received the State Bar's July 15, 2009 letter, and requested that a copy of it be faxed to him at a fax number he provided.

Also on September 8, 2009, Award Debtor faxed to the State Bar a copy of a letter addressed to the Hemet Valley Medical Center regarding his brother's hospitalization. The fax cover sheet stated that the enclosed was Award Debtor's "response to the [State Bar's] August 18, 2009 letter."

On September 9, 2009, the State Bar faxed a full copy of its July 15, 2009 mailing to Award Debtor. One week later the State Bar sent Award Debtor a letter granting him an extension until September 30, 2009, to submit a formal reply to Silva's request for enforcement.

Award Debtor did not subsequently submit a reply to the request for enforcement. The State Bar sent him a second warning letter on October 16, 2009. After Award Debtor failed to respond to this letter, the Presiding Arbitrator issued an Order re Administrative Penalties levying an administrative penalty of \$1,150.00 against Award Debtor on November 13, 2009.

This order was served on Award Debtor by both regular and certified U.S. mail on November 16, 2009. Award Debtor did not respond to this order.

On July 26, 2010, the State Bar wrote to Award Debtor advising him of its intent to file a motion for his involuntary inactive enrollment for his failure to comply with the final and binding arbitration award in the present matter. As of September 3, 2010, the State Bar had not received a reply to its July 26, 2010 letter and Award Debtor had not proposed a payment plan or paid any portion of the arbitration award.³

C. Conclusions of Law

The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear and convincing evidence that Award Debtor has failed to comply with the arbitration award and has not produced a payment plan acceptable to the client or the State Bar. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 705(a).)

Since Award Debtor did not participate in this proceeding, the court finds he has not met his burden of demonstrating by clear and convincing evidence that: (1) he is not personally responsible for making or ensuring payment of the award; (2) he is unable to pay it; or (3) he has proposed and agrees to comply with a payment plan which the State Bar has unreasonably rejected. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 705(b).)

IV. ORDER

IT IS ORDERED that Award Debtor **Randell Anthony Monaco**, be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6203, subdivision (d)(1), effective five days after the date of service of this order. (Rules Procedure of State Bar, rule 708(b)(1).)

IT IS FURTHERED ORDERED that Award Debtor must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Suzanne Silva in the amount of \$7,350, plus interest at the rate of ten percent per annum from April 2,

³ There is no indication in the record that Award Debtor has since proposed a payment plan or paid any portion of the arbitration award.

2009, the date the award was served; (2) he has paid reasonable costs, if any; and (3) the court grants a motion to terminate the inactive enrollment pursuant to rule 710 of the Rules of Procedure of the State Bar of California.

Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's submission of a bill of costs. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 708(b)(2).)

Dated: October 5, 2010

RICHARD A. PLATEL
Judge of the State Bar Court